DRN-4786552

The complaint

Mr L complains that Lloyds Bank PLC won't refund the money he lost when he was the victim of what he feels was a scam.

What happened

In 2018, Mr L was told about an opportunity to invest in a property development company by an investment broker. He was told he would be providing a loan to the company, and that his investment would be used to fund the company's projects and he would receive regular interest payments in return. And after seeing brochures for the investment, Mr L decided to invest and made a number of payments from his Lloyds account to the property development company.

I've set out the payments Mr L made from his Lloyds account below:

Date	Amount
25 January 2018	£25,000
26 January 2018	£25,000
29 January 2018	£25,000
29 January 2018	£25,000

Unfortunately, Mr L didn't receive all the interest payments he was told he would, and the property development company has now gone into administration. Mr L then reported the payments he had made to Lloyds as a scam and asked it to refund the money he had lost.

Lloyds investigated but said the property development company appears to be a genuine company that had suffered financial difficulties, rather than a scam. So it didn't agree to refund the payments Mr L had made. Mr L wasn't satisfied with Lloyds' response, so referred a complaint to our service.

One of our investigators looked at the complaint. They didn't think the circumstances met the definition of a scam, or that Lloyds would've had any concerns even if it had intervened here. So they didn't think Lloyds should have to refund the money Mr L had lost. Mr L disagreed with our investigator, so the complaint has been passed to me.

What I've decided – and why

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

Banks are expected to make payments in line with their customers' instructions. And Mr L accepts he made the payments here. So while I recognise he now feels he has been the victim of a scam, he did authorise the payments. And so the starting position in law is that Lloyds was obliged to follow his instructions and make the payments. So Mr L isn't automatically entitled to a refund.

There are certain activities banks are expected to carry out to try to protect their customers from falling victim to scams, and certain protections in place for customers who do fall victim to scams. But, before looking at whether Lloyds has done what we'd expect it to do or whether these protections apply, I must first be satisfied that Mr L has been the victim of a scam.

The relevant test for whether someone has been the victim of a scam comes from the FCA handbook. This defines a scam as where a customer transferred funds to another person for what they believed were legitimate purposes but were in fact fraudulent.

So in order to determine whether Mr L has been the victim of a scam, I need to consider whether the purpose he intended for the payments was legitimate, whether the purposes he and the property development company intended were broadly aligned and then, if they weren't, whether this was the result of dishonest deception on the part of the company.

From what I've seen and what he's told us, I'm satisfied Mr L made the payments here with the intention of investing with the property development company. He thought his funds would be used to fund projects the company was carrying out, and that he would receive returns on his investment. And I haven't seen anything to suggest that Mr L didn't think this was legitimate.

But I'm not satisfied the evidence I've seen shows that the property development company intended a different purpose for the payments, or that Mr L's and the property development company's purposes for the payments weren't broadly aligned.

From what I've seen, the property development company completed three different development projects – in three different cities across the UK. It also worked on a number of other developments, which it sold to developers when it experienced financial difficulties. And I wouldn't expect a company that intended to scam investors, to complete these projects that would have involved a large amount of investment and management. So I think the completion of these projects strongly suggests the property development company was attempting to operate as a legitimate business.

Mr L has also argued that the property development company was offering very high rates of return and paying very high commission to introducers, which made the rate of return offered on the investment very unlikely. But while this, and other irregularities or poor business practice Mr L has highlighted may suggest the property development company wasn't acting as I would expect a professional business to do, I don't think it goes far enough to show that it intended to operate a scam.

Mr L has also highlighted a number of inaccuracies or irregularities with the accounts the company has filed, and that it has only filed accounts made up to 2018. But while this may suggest financial mismanagement on the part of the company, this is not the same as the intention to operate a scam and I don't think it shows that the company never intended to use investor's funds for development projects.

I've also not seen anything from the administrators of the company which suggests the company was operating a scam or that the transactions carried out by the company and other connected companies were done with any intention other than putting investor's funds towards development projects. And I haven't been provided with evidence of any investigation by an external organisation which concludes that the company was operating a scam.

So I'm not persuaded that the available evidence is sufficient to safely conclude that the purpose the property development company intended for this payment was different than the purpose Mr L intended. And so I don't think the circumstances here meet the definition of a scam, or that Lloyds has acted unreasonably in not agreeing to refund the money Mr L lost from these payments as a result.

It's possible that material new evidence may become available at a future date, which suggests the property development company did take the payments using dishonest deception. But, even if that evidence were to become available, I still don't think anything I would have expected Lloyds to have done would have prevented the loss Mr L suffered.

The regulatory landscape, along with good industry practice, sets out other requirements for banks to protect their customers from fraud and financial harm. So, in line with this, I think Lloyds should fairly and reasonably:

- Have been monitoring accounts and any payments made or received to counter various risks, including anti-money laundering, countering the financing of terrorism, and preventing fraud and scams.

- Have had systems in place to look out for unusual transactions or other signs that might indicate that its customers were at risk of fraud (among other things). This is particularly so given the increase in sophisticated fraud and scams in recent years, which banks are generally more familiar with than the average customer.

- In some circumstances, irrespective of the payment channel used, have taken additional steps, or made additional checks, before processing a payment, or in some cases declined to make a payment altogether, to help protect customers from the possibility of financial harm from fraud.

But, even if Lloyds had carried out the checks I would've expected it to have done, I don't think it would've uncovered significant concerns and I don't think these payments Mr L was trying to make to the property development company would have been stopped.

In these circumstances and given the size of the payments Mr L was making, I think it would be reasonable to expect Lloyds' checks to include questions about the purpose of the payments and then relevant follow-up questions about the investment Mr L thought he was making and what checks he had done to satisfy himself it was genuine.

But Mr L thought he was investing in a loan offered by the property development company where he would provide capital and the company would pay him interest each year. And as this is a fairly standard format of investment, I don't think this will have seemed particularly suspicious to Lloyds.

At the time, the property development company – or the connected group of companies – had been listed on the governments register of limited companies and filed accounts for several years. And I wouldn't necessarily expect this of a company intending to operate a scam, so I think this would have reassured both Mr L and Lloyds that the company was genuine.

I've also seen copies of promotional literature the property development company issued in relation to the loans, and I think this looked relatively professional and legitimate. So, if Lloyds had asked to see any paperwork associated with the investment, I don't think this would have raised any concerns either.

And so if Lloyds had carried out the checks I would've expected when Mr L tried to make these payments, I think it would have been satisfied with the information it was given and I don't think anything it was told or shown would've caused it significant concern. Based on the information I would have expected it to uncover at the time, I think this would have looked like a genuine investment to Lloyds. And so I wouldn't have expected it to stop Mr L making the payments.

During this complaint, Mr L has sent us a significant amount of detailed information about the property development company, which he suggests shows there were irregularities with how the company was conducting its business. But this information has only come to light since the payments he made, and wouldn't have been available to either him or Lloyds at the time. I also wouldn't have expected Lloyds' checks to go into the level of detail necessary to uncover this kind of information, as the information it would've been given from the checks I would've expected it to do earlier wouldn't have uncovered any significant concerns. So I don't think this information Mr L has sent us means Lloyds would've acted unreasonably in allowing the payments to go through.

And so I don't think anything I would reasonably have expected Lloyds to have done in relation to these payments would have prevented the loss Mr L suffered. I therefore don't think it would be fair to require it to refund these payments he made.

I sympathise with the position Mr L has found himself in and I appreciate that he has lost a significant amount of money. I'm also in no way saying he did anything wrong or that he doesn't have a legitimate grievance against the property development company. But I can only look at Lloyds' responsibilities here and, for the reasons I've explained above, I don't think it would be fair to hold Lloyds responsible for the money he lost.

My final decision

For the reasons set out above, I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr L to accept or reject my decision before 29 November 2024.

Alan Millward
Ombudsman